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10/563,909	01/10/2006	Marco Pirovano	4017-41	5626
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NIXON & VANDERHYE, PC			MEHTA, BHISMA	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/563,909	Applicant(s) PIROVANO ET AL.
	Examiner BHISMA MEHTA	Art Unit 3767

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 06 January 2009.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 75-94 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 75-94 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO/0256/06)
 Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____
 5) Notice of Informal Patent Application
 6) Other: _____

DETAILED ACTION

Specification

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The specification fails to disclose the elastomeric container, in use, exerting pressure on the pharmacological solution.

Claim Objections

2. Claims 89 and 90 are objected to because of the following informalities: In line 1 of claim 89, there appears to be a grammatical error with the phrase "a battery to supply electric to".

Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claim 93 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had

possession of the claimed invention. The specification as originally filed fails to disclose that the elastomeric container is pressurized in use to prevent the pharmacological solution from flowing from the elastomeric container back to an inlet, and/or to induce flow of the pharmacological solution from the elastomeric container to an outlet.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 75-79, 81, 82, and 89-94 are rejected under 35 U.S.C. 102(b) as being anticipated by Martin (U.S. Patent No. 4,976,687). In lines 4-24 of column 3 and in lines 4-68 of column 6, Martin discloses an infusion system having an elastomeric container (30) for containing a pharmacological solution and for generating a flow of the solution from the container to a catheter (17, 112), a valve arrangement (14, 110) to vary the flow, and a command and control device (116). The command and control device is operationally connected to the valve arrangement to command a pulsed actuation of the valve arrangement where the flow is determined by the number of actuations of the valve arrangement per unit time (lines 55-68 of column 6). As to claim 76, see lines 55-68 of column 6. As to claim 77, see lines 24-30 of column 6. As to claim 78, the command and control device comprises a microprocessor. As to claim 79, the elastomeric container is supported on a support element (10) associated with a

containing and protection element (28) (lines 36-45 of column 3). As to claims 81 and 82, the containing and protection element comprises an inlet portion (36, 107) connected to the elastomeric container where the inlet portion is associated with an introducing device (34, 104). As to claims 89 and 90, the system has a battery (102) which is rechargeable or replaceable. As to claim 91, see lines 31-41 of column 6. As to claims 92-94, the elastomeric container is structured or configured to exert a pressure or is pressurized in use as disclosed in lines 13-23 of column 6.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claims 80-85 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin in view of Kanai et al (U.S. Patent No. 6,367,502). Martin discloses the system substantially as claimed. Even though Martin discloses a containing and protection element, Martin is silent on the containing and protection element being made of transparent material and being equipped on its outside surface with a graduated scale. Also, even though Martin discloses an inlet portion, Martin is silent on the containing and protection element having both an inlet and an outlet portion. Kanai et al disclose an infusion system having a pumping device comprising an elastomeric container (11) which is supported on a support element (10) associated with a transparent containing

and protection element (2). The containing and protection element has a graduated scale (4). The containing and protection element has an inlet portion (19) with a check valve (13) and a connecting element (17) and an outlet portion (18) which is connected to a first end of a fitting element (30). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the containing and protection element of Martin from a transparent material and with a graduated scale as taught by Kanai et al as both Martin and Kanai et al disclose infusion systems having an elastomeric container and a containing and protection element and Kanai et al disclose that it is well known to make the containing and protection element from a transparent material and having a scale to allow one to determine the amount of solution within the system. It also would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the containing and protection of Martin with an outlet portion as taught by Kanai et al as Kanai et al disclose providing the containing and protection element with an inlet portion and an outlet portion in order to both deliver a flow of solution to the patient through one portion and to allow for injecting the solution through the other portion. As to claim 85, Martin discloses a connecting element (36) associated with the valve arrangement and suitable for enabling coupling of the valve arrangement with a delivery device.

9. Claims 86-88 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin in view of Franetzki et al (U.S. Patent No. 4,270,532). Martin discloses the system substantially as claimed. Even though Martin discloses a command and control device, Corbin et al are silent on the specifics of an interface element for operationally

connecting the command and control device with a data processing system and a reading device. Franetzki et al disclose an infusion system having a container and a command and control device comprising a microprocessor (I). The command and control device also has an interface element for operationally connecting the command and control device to a data processing system (44) and a reading device for receiving a data recording support in the form of a smart-card type (lines 38-52 of column 2 and lines 3-24 of column 7). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the command and control device of Martin with an interface element as taught by Franetzki et al as Franetzki et al disclose that it is well known to use a command and control device having an interface element to allow the desired infusion to be pre-programmed and monitored by a physician. To provide the command and control device of Martin with a reading device as taught by Franetzki et al would have also been obvious to one having ordinary skill in the art at the time the invention was made as Franetzki et al disclose that it is well known to use a command and control device having a reading device to allow for the programming data which is already stored on a carrier or card to be easily read by the command and control device.

Response to Arguments

10. Applicant's arguments with respect to claims 75-94 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BHISMA MEHTA whose telephone number is (571)272-3383. The examiner can normally be reached on Monday through Friday, 7:30 am to 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on 571-272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Bhisma Mehta/
Examiner, Art Unit 3767
/Kevin C. Sirmons/
Supervisory Patent Examiner, Art Unit 3767